

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RYAN KERWIN,)	
)	
Plaintiff)	Civil Action No. 05-0093E
)	
v.)	
)	
LT. WILLIAM McCONNELL,)	Judge Sean J. McLaughlin
)	
Defendant.)	Electronically Filed.

DEFENDANT'S MOTION IN LIMINE

AND NOW, comes the Defendant by his attorneys, Douglas B. Barbour, Deputy Attorney General, Tracey Wilson, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully submits the following:

1. During the telephonic pretrial conference held October 19, 2007, this Honorable Court held that the misconduct issued to Plaintiff by Officer Rinella, misconduct number A436723, was not relevant to this matter. This Honorable Court also held that certain occurrences at SCI-Smithfield were not relevant in this case.

2. Pursuant to these rulings, the Court also barred the testimony of Corliss, Baker, Vick, Cortino, Hannah, Woznicki, and Rinella as irrelevant.¹

3. The following documents identified in Plaintiff's pretrial statement are related to the misconduct deemed irrelevant by the Court: P-10, P-11, P-12, P-13, and P-14. These documents are thus irrelevant and inadmissible. See F.R.E. 402. In addition,

¹ The Court initially barred the testimony of inmate Anthony DeFranco as well, but then issued a Writ of Habeas Corpus Ad Testificandum as to DeFranco. The Court noted that it would entertain renewed objections to DeFranco's testimony at a later date.

a portion of P-38 deals with this misconduct. Thus, the portions of this proposed exhibit that deal with the irrelevant misconduct are inadmissible.

4. The following documents identified in Plaintiff's pretrial statement are related to the occurrences at SCI-Smithfield deemed inadmissible by the Court: P-3, P-4, P-8, and P-9. These documents are thus irrelevant and inadmissible. See F.R.E. 402.

5. The following documents identified in Plaintiff's pretrial statement are documents related to a case brought by Inmate DeFranco against potential witnesses Showers and Rhoades: P-21, P-22, P-23, P-25, P-25, and P-26. These documents are irrelevant and have the sole purpose of trying to demonstrate conformity with prior acts, and thus should be excluded. See F.R.E. 402, 404(b).

6. The documents identified in Plaintiff's pretrial statement as P-30 and P-44 relate to discovery disputes. Such discovery disputes are irrelevant at trial, and thus are inadmissible. See F.R.E. 402.

7. In addition, exhibit P-31, which contains duty logs for August 5, 2003 to August 26, 2003, exhibit P-15, Kerwin's Cumulative Adjustment Record, and exhibit P-16, Kerwin's inmate account statements from September, October, and November of 2003, are irrelevant to this matter and thus inadmissible. See F.R.E. 402. Document P-15 also contains hearsay and should be excluded for this reason as well. See F.R.E. 802.

8. The defendant also requests that any testimony regarding these excludible documents be barred as well.

9. The defendant's supporting brief is hereby incorporated by reference.

WHEREFORE, it is respectfully requested that Defendant's Motion in Limine be granted, documents P-3, P-4, P-8, P-9, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-21, P-22, P-23, P-24, P-25, P-26, P-30, P-31, P-44 be excluded in their entirety, document P-38 be excluded to the extent it deals with the irrelevant second misconduct, and all testimony related to these excludable documents be barred.

Respectfully submitted,

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Susan J. Forney
Chief Deputy Attorney General
Chief, Litigation Section

Date: November 14, 2007

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Defendant's Motion in Limine** was electronically filed with the Court and served upon the following via first-class mail:

Ryan Kerwin
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Philadelphia, PA 19124

/s/ Douglas B. Barbour
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Deputy Attorney General

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Date: November 14, 2007